

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....  
Student A.J. Doe

v.

Lincoln School District  
.....

**INTERIM ORDER**  
**DECISION**

HELD: The petition for an interim order placing this student at the High Roads school is denied. The prior interim order entered in this matter March 13, 2009 is to remain in effect.

DATE: July 29, 2009

## **Jurisdiction and Travel of the Case**

This is an interim order case. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L.16-39-2, and R.I.G.L.16-39-3.2. Questions relating to the placement of Student A.J. Doe have recently been before us on two other occasions.<sup>1</sup> The interim order case now before us relates only to the provision of an extended school year (ESY) placement to Student A.J. Doe.

Still, for clarity's sake, we must mention that this ESY dispute is an element of a broader dispute involving whether or not Student A.J. Doe needs an out-of-district long term placement at the West Bay Collaborative in order to ensure that he receives a free, appropriate, public education (FAPE). In a prior interim order decision in this matter the Commissioner of Education found that Student A.J. Doe was entitled to a *status quo* "stay-put" placement (34 CFR 300.513) at Lincoln High School while the dispute concerning his ultimate school placement is being resolved. This dispute concerning the long term placement needs of Student A.J. Doe has now been referred to a due process hearing officer for resolution in accordance with the due process requirements of the Individuals with Disabilities Education Act (IDEA). Unfortunately, for various justifiable reasons, no decision by a special education due process hearing officer has yet been rendered on the merits of this case.

The dispute now before us concerns Lincoln's proposal to place this student in an extended school year (ESY) summer program at the West Bay Collaborative. The parent agrees that this student should be in an ESY program, but she submits that the program at the West Bay collaborative is not an appropriate ESY placement for her son. She is seeking an interim order which would place Student A.J. at an ESY program at the High Roads School, a private special education facility.

## **Findings of Fact**

1. The high school age student in this case has been in special education since he was three years old. He has significant disabilities, some elements of which can lead him into conflicts with others. His prior school placements have not been without difficulties.<sup>2</sup> The school district and the parent have been attempting to develop a new Individualized Education Plan (IEP) for this student.
2. "After meetings on January 30, 2009 and February 5, 2009 Student Doe's IEP team recommended that his placement be changed from Lincoln High School to an out-of-district placement at the West Bay Collaborative."<sup>3</sup>

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<sup>1</sup> *Student J.A. Doe v. Lincoln School Committee*, Commissioner of Education, March 13, 2009 and *In the Matter of Student A. Doe*, Commissioner of Education, January 29, 2008.

<sup>2</sup> Transcript, Page 61 & Transcript, page 81.

<sup>3</sup> *Student J.A. Doe v. Lincoln School Committee*, Commissioner of Education, March 13, 2009 and *In the Matter of Student A. Doe*, Commissioner of Education, January 29, 2008.

3. The parent did not agree with this suggested placement and filed for a due process hearing. The parent also requested an interim order from the Commissioner of Education to require that this student's placement at the Lincoln High School be maintained as the student's status quo placement.
4. The last uncontested IEP for this student was the IEP that was effective from November 25, 2008 until the 30<sup>th</sup> of January of 2009. This IEP called for an ESY program for this student.<sup>4</sup>
5. In an Interim Order dated March 13, 2009 the Commissioner directed that: "Pending any ruling by a due process hearing officer (in a regular or expedited due process context" that would change student Doe's current educational placement, he is to continue to attend Lincoln High School and participate in his current schedule of classes unless his removal from class is warranted by implementation of a behavioral intervention plan or a determination is made by school personnel that Student Doe presents an immediate threat to himself or to others."<sup>5</sup>
6. For various apparently good reasons the IDEA due process hearing requested by the parent has not made much progress to date.<sup>6</sup> The student himself, during this time period, has experienced several hospitalizations, at least two of which may relate to some of his handicapping conditions.<sup>7</sup>
7. In prior years, in accordance with his IEP, Student A.J. Doe attended an extended school year at a program called "Perspectives." For various reasons this placement has become unavailable to him.
8. Student A.J. Doe did not attend a formal extended school year (ESY) program in summer of 2008. Instead, he participated in a home based program, with outside school support. "He got support at home through a speech language therapist, a tutor, and an O.T., occupational therapist, and a social worker."<sup>8</sup>
9. The parent and the school district are presently involved an IEP dispute which is now before a due process hearing officer. The student's last uncontested IEP called for an extended school year placement for this student. All parties seem to agree that an extended school year placement is not only required by that student's last uncontested IEP, but is also necessary to provide him with a free appropriate public education.<sup>9</sup>

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<sup>4</sup> Transcript, page 46. SEE: IEP, page 14.

<sup>5</sup> Student J.A. Doe v. Lincoln School Committee, Commissioner of Education, March 13, 2009.

<sup>6</sup> Transcript, Page 24.

<sup>7</sup> Transcript, Page 13

<sup>8</sup> Transcript, page 13.

<sup>9</sup> Transcript, pages 15 and 16.

10. We find that a “*status quo*” placement at the Perspectives program is not available to this student and that Lincoln has arranged for this student to attend an ESY program at the West Bay Collaborative. Of course, the West Bay collaborative is also the placement that the school district is urging as an appropriate long-term placement for Student A.J. Doe.
11. Neither party contends that the program of summer home study which took place in 2008 would constitute an appropriate “stay-put” placement for this student.
12. At the parent’s request, the student’s school records were sent by Lincoln to the High Roads School, for evaluation.<sup>10</sup> High Roads School is affiliated with the Goodwill Industries program.<sup>11</sup> High Roads has indicated that it has an available ESY placement for this student. Records were also sent to the Providence Center, but the Providence Center did not have a placement for this student.<sup>12</sup>
13. The Director of High Roads testified: “We provide services to students with a variety of emotional needs, various psychological disorders ranging from ED/BD, population of emotional disturbances and behavioral disorders, through students with various forms of autism, as well as a few other disorders, multiple disabilities.”<sup>13</sup> He also testified that: “We would typically be considered to be one of the more restrictive environments that exist on that continuum when restrictiveness is defined in its usual way as a time with nondisabled peers or mainstream peers. Under that consideration, since we are a separate day school, we are among the more restrictive environments available.”<sup>14</sup> (Emphasis added)
14. The Director of High Roads was asked if the student were to be admitted to High Roads. “Would that mix [the student] in with students who are less disabled than him? He replied: I’m resistant to that sort of description. I would say it would mix him with students who are differently disabled than him and who perhaps might be construed to be less disabled in that they are more readily able to engage in normal social situations.”<sup>15</sup>
15. Both High Roads and the West Bay Collaborative do have proper restraint policies that they implement in appropriate ways under appropriate circumstances.<sup>16</sup>
16. Concerning the ESY program at the West Bay Collaborative, the special education director of Lincoln testified: “The students at West Bay are diverse, there’s girls, there’s boys, a multitude of different disabilities. The program has a component in it that is a more nurturing component for behaviors. There’s counseling in small groups. It’s an atmosphere that doesn’t – there are possible restraints like in any program, but it’s not up in your face kind of problem. They work very hard on diversifying their education program and getting to know their students so that they can look at areas of strength so

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<sup>10</sup> Transcript, page 41

<sup>11</sup> Transcript, Page 44.

<sup>12</sup> Transcript, Page 49.

<sup>13</sup> Transcript, Page 83.

<sup>14</sup> Transcript, Page 86.

<sup>15</sup> Transcript, Page 87.

<sup>16</sup> Transcript, Page 49 and 111.

that you can work on the areas of need. So, like I said before, in [the student's] case, he likes art. He likes photography. He likes cooking. They would work in those areas of strength and kind of develop their program. .... They're more diversified as far as their behavioral component, as well. Behavior programs are designed around the child and not necessarily the typical program, behavior program."

17. At one point the school district was prepared to settle this matter by placing this student at the High Roads School as a full time placement, provided that the parent agreed to certain conditions.<sup>17</sup> The parent rejected this offer. At all times the school district has contended that the West Bay Collaborative is an appropriate placement for the student.<sup>18</sup>
18. The record shows that a high level of contention between the parties has existed for a long period of time.<sup>19</sup>
19. It is an 11 minute drive from the student's house to the High Roads School. It is 31 minute ride to from the student's home to the West Bay Collaborative.<sup>20</sup>
20. We find that that the testimony of Dorothy E. McDonough qualifies as expert testimony on matters relating to administrative operations and special education procedural issues, but that her testimony does not qualify as expert testimony on questions of special education placements. We also find that even if McDonough's testimony qualified as expert testimony on questions of special education placements the testimony she gave would not change our decision in this matter.

## Conclusions of Law

1. The Rhode Island Board of Regents' *Regulations Governing the Education of Children with Disabilities* deals with extended school year services at 300.106:

### **300.106 Extended school year services.**

(a) *General.* (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a) (2) of this section.

(2) Extended school year services must be provided when a child's IEP Team determines, on an individual basis, in accordance with 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

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<sup>17</sup> Petitioner's exhibit 2. Written settlement agreements are allowable under Federal Special Education regulations.

<sup>18</sup> Petitioner's exhibit 2. Written settlement agreements are allowable under Federal Special Education regulations.

<sup>19</sup> Transcript, page 107.

<sup>20</sup> Transcript, Page 67.

(b) *Definition.* As used in this section, the term extended school year services means special education and related services that –

- (1) Are provided to a child with a disability
  - (i) Beyond the normal school year of the public agency;
  - (ii) In accordance with the child's IEP; and
  - (iii) At no cost to the parents of the child; and
- (2) Meet the RI Department of Education extended school year standards as adopted by the RI Board of Regent

2. Concerning “stay-put” the he Rhode Island Board of Regents’ *Regulations Governing the Education of Children with Disabilities* state at 300.518

**300.518 Child’s status during proceedings**

(a) Except as provided in 300.533 [relating to disciplinary matters], during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

3. In *In Re: John C.L. Doe*, we stated that

For a child with disabilities who is eligible for special education and related services, interim order authority can be utilized to maintain a ‘status quo’ placement pending resolution of a dispute between parents and a school district as to what constitutes an appropriate placement. . . . Although ‘the state’ does have the discretion to alter a status quo placement at the request of the parents [footnote omitted] we have consistently ruled that the exercise of such discretion should not short-circuit the due process procedures established by Congress unless there is a clear need to do so to protect the rights of the student [citation omitted]. The Commissioner of Education has consistently declined the invitation to create or change placements, absent extraordinary circumstances [citations omitted].<sup>21</sup>

**Discussion**

It is evident that the school district believes that this student should be placed at the West Bay Collaborative as a full time placement. It appears that the parent would like to see the student placed at the High Roads School as a full time placement. To the parent, the suggestion that this student should receive an ESY program at the West Bay Collaborative may seem as an unwanted step toward a full time placement at the West Bay Collaborative. This concern however, if it exists, is a needless one, because the Commissioner has already entered an interim

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<sup>21</sup> Decision of October 21, 1997, p. 5.

order establishing the Lincoln High School as the student's full time placement pending completion of appropriate due process procedures.

Surprisingly, it is often difficult to determine how a student's stay put placement should be determined. This is because situations arise, for example, where the student has aged out of a placement or the placement no longer exists. Under such circumstances we must look to the student's last uncontested IEP and attempt to define a placement which matches the placement described in the IEP. In the present matter the student's last uncontested IEP calls for an ESY program which supports all the goals of his IEP.<sup>22</sup>

The petitioner contends that a placement at the West Bay Collaborative ESY program is inappropriate because the ride to the program is too long, the placement is more restrictive, and the student will have less opportunity to interact with peers in Lincoln. The school district contends that there is nothing excessive about the length of the ride at issue, and that, in any event, it has arranged van transportation for the student. Furthermore, the district contends that the placement at the West Bay Collaborative ESY program is perhaps less restrictive than the placement at the High Roads School ESY program.

## **Conclusion**

After examining the record in this matter we find that there is not a material difference between the High Roads School ESY and the West Bay Collaborative ESY program in terms of restrictiveness, length of bus ride, or in terms correspondence with the goals set forth in the student's last uncontested IEP. We find that either program can meet the requirements of Student A.J. Doe's IEP. We therefore conclude that the school district, by offering this student an ESY program at the West Bay Collaborative has meet its obligation to provide this student with FAPE.

The petition for an interim order placing this student at the High Roads school is therefore denied. The prior interim order entered in this matter March 13, 2009 is to remain in effect.<sup>23</sup>

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Forrest L. Avila, Hearing Officer

APPROVED:

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Deborah A. Gist, Commissioner

July 29, 2009  
Date

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<sup>22</sup> Exhibit 1.

<sup>23</sup> *Student J.A. Doe v. Lincoln School Committee*, Commissioner of Education, March 13, 2009.